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7 September 1961

OBSERVATIONS ON THE LEGAL ASPECTS OF THE PRESENT KATANGA SITUATION

In the absence of more detailed information regarding the threatened hostilities, and the specific measures that are proposed to be taken by the United Nations troops, one cannot reach definitive legal conclusions on the issues raised by the recent cables. However, the following summary observations may serve as a guide for the time being.

1) The United Nations mandate to maintain law and order authorizes it to occupy positions and deploy troops to protect civilians in cases of inter-tribal warfare or in cases where there is a danger of violence.

2) Similar authority exists under paragraph 1 of Security Council resolution of 21 February 1961 to take preventive action where there is incitement to, or actions in preparation of, civil war.

3) Moreover, the United Nations Force is clearly entitled to use the necessary force in self-defense in response to attempts to compel them to withdraw from positions or attempts to infiltrate and envelop such positions in a way as to jeopardize their safety. Such self-defense measures may also be taken to resist attempts to injure or abduct United Nations personnel.

4) Self-defensive measures by the U.N. Force would also be justified where there is evidence of a clear danger that U.N. troops may be subject to imminent attack. In such cases, defensive action may be taken to disarm or detain those preparing the attack.

5) Whether or not reports of preparation ^{for} or incitement to, violence justify the use of preventive or defensive force by United Nations troops can only be answered in the light of the specific circumstances. Obviously, mere criticism of U.N. action - even if vigorously stated - or demonstrations of a peaceful nature would not justify use of force by the United Nations. However,

actual troop movements or well-confirmed reports of impending attack would warrant protective action by the United Nations troops. Such protective action would include the employment of such force as is necessary to meet the danger.

6) The mandate to maintain law and order and to prevent civil war may also justify, in certain circumstances, the closing of means of communication such as the radio station and airports, if circumstances clearly indicate that they are being used or may be presently used for civil war or unlawful purposes. The legal basis for taking such measures is of course strengthened when the competent authorities of the Central or provincial government have requested or approved such measures.

7) Measures for the forcible apprehension and detention of individuals are clearly justifiable in the event that they are apprehended while engaged in military action or otherwise in flagrante delicto. In circumstances which fall short of this, the problem is a difficult one to deal with in abstracto. The situation may be such as to warrant detention or the placing of a guard around the house if the individual involved is clearly engaged in incitement to immediate violence. On the other hand, to detain or apprehend a political leader without such justifying circumstances would appear to involve a violation of the ban against intervention in domestic political conflicts.

8) The difficulty referred to above is substantially overcome if both the provincial and Central Government authorities request United Nations assistance in effecting an arrest for the purposes of preventing disorder and civil war. It would appear doubtful, however, that an arrest order by the Central Government authorities alone against a provincial leader should, by itself, be a basis for enforcement action by the United Nations. This consideration would seem to apply even if the Central Government legally appointed a commissaire d'état to enforce laws under Article 184 of the Basic Law.

9) With respect to the commissaire d'état, it is difficult to say that the appointment of that official to act in a province decisively changes the legal situation that otherwise applies to the United Nations in regard to conflicts between the Central and provincial governments; that is to say, assistance in enforcing measures of the commissaire d'état would have to have the same legal justification as taking measures requested by the Central Government in opposition to the provincial government. In other words, the intervention of a commissaire d'état would not ipso facto remove the problem of interference in constitutional conflicts.